HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION NO. 6553 OF 2005

Dated 27th July, 2005.

Between:

Sri Sai Ram Varthaka Sasngham, represented by its President V.Shiva, son of Venkata Rao, aged about 27 years, 44th Ward, resident of 58-19-24/1, Visakhapatnam-27.

Petitioner.

And:

1. The Commissioner, Municipal Corporation of Visakhapatnam and others.

..Respondents.

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WRIT PETITION NO. 6553 OF 2005

ORDER :

This writ petition has been filed by Sri Sai Ram Varthaka Sangham, represented by its President V.Shiva, assailing the action of the Commissioner, Municipal Corporation of Visakhapatnam-1st respondent and the Executive Engineer, (R&B) Sitammadhara, Visakhapatnam in evicting the members of the said Sangham without issuing any notice or taking recourse under law.

The president of the petitioner-Sangham has given his sworn affidavit in respect of the writ petition. It is stated in the affidavit that the members of the petitioner-Sangham have been doing petty business in the Municipal site for more than 25 years and they have been paying necessary amounts to the Municipal Corporation, Visakhapatnam. The affidavit further reads that the respondents 1 and 2 are trying to evict the members of the petitioner-shangam highhandedly without taking recourse

to law.

The Counter-affidavit has been filed by the respondents 1 and 2. The respondents 3 and 4 have come on record as per the orders in W.P.M.P.No.9618 of 2005.

Heard the learned counsel for the petitioner and standing learned counsel appearing on behalf of the respondents 1 and 2 and learned counsel appearing for the respondents 3 and 4.

The learned Counsel for the petitioner submits that the members of the petitioner-Sangham have been carrying on petty business on the Municipal site for a quite long time and they have been paying the necessary amount to the 1st respondent-Corporation. Some Xerox copies of the receipts have been placed on record to show that some members of the petitioners society had paid the amount to the 1st respondent-Corporation. He further contends that the respondents 1 and 2 are taking steps to remove the constructions made by the members of the petitioner-Sangham without following the due process of law.

The learned standing counsel appearing for the respondents 1 and 2 submits that under section 405 of the Municipal Corporation Act, no notice is contemplated for removal of any constructions found on the road margin and therefore, the action of the respondents cannot be found valid. The counsel appeared for the respondents 3 and 4 submits that the action of the respondents 1 and 2 is in accordance with the direction given by the Division Bench of this Court in W.P.No.24625 of 2002 and therefore, their action cannot be found valid.

It appears that the respondents 3 and 4 along with two other filed Writ Petition No.24625 of 2002 seeking direction to the Municipal Corporation, Visakhapatnam and three others to remove the encroachments on the road margin. The said writ petition came to be allowed giving directions to the respondents therein to take steps for removal of the structures on the road margins. I deem it appropriate to refer the relevant para in the Judgment passed by this Court and it is thus:

> “In view of what has been stated by respondents in affidavit in reply, we will direct the Commissioner of Police, Visakhapatnam, and the Superintendent of Police, Visakhapatnam, be added as party respondents, and names of counsel appearing for them will also be shown in cause title, and proceed to dispose of the writ petition directing that respondent No.1 may treat the

counter-affidavit of respondent No.2 as a request for removal of encroachments, and thereafter respondent No.1 will take all necessary and possible steps in ensuring that all the encroachments at the place in question are removed strictly in accordance with law. In case there is any resistance in removing the encroachments, we direct that, on the request made in that behalf by respondentNo.1 or by respondent No2, respondent Nos.3 and 4 will ensure that proper police protection is provided at the time of removal of encroachments. Respondents 1 and 2 will ensure that the area in question is kept free from encroachments and to ultimately see that it is converted into green belt. Respondent No.1 will initiate appropriate action in the matter within two months from the date of receipt of writ order from the Court."

It is explicit from the above referred order in the writ petition that the encroachments are to be removed in accordance with law. In such a situation, I deem it appropriate to dispose of the writ petition directing the respondents 1 and 2 to follow due process of law in case the petitioners are to be dispossessed from the site in which they have put up constructions and have been paying amounts to the Municipal Corporation of Visakhapatnam.

Accordingly, the writ petition is disposed of. No costs.

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Justice B.SESHASAYANA REDDY

27th July, 2005.

Note:

CC by one week.

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Dvs

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